

STATINTL



Department Notice

October 10, 1978

TO ALL EMPLOYEES
STATE, AID, ICA, ACDA

FOREIGN SERVICE RETIREMENT AND DISABILITY LEGISLATION

The President signed into law on October 7 the FY 1979 Foreign Relations Authorization Act. Section 406 of this legislation reads as follows:

Special Computation of Annuities

Sec. 406. Notwithstanding the first sentence of Section 821(A) of the Foreign Service Act of 1946 (22 U.S.C. 1076(A)), the annuity of any participant in the Foreign Service Retirement and Disability System whose salary was or is limited by the provisions of Section 5308 of Title 5, United States Code, and who retires during the period beginning October 1, 1978, and ending December 31, 1979, shall be equal to 2 per centum of his or her basic salary for the highest year of service for which contributions have been made to the Foreign Service Retirement and Disability Fund multiplied by the number of years, not exceeding thirty-five, of service credit obtained in accordance with the provisions of Section 851 and 853 of the Foreign Service Act of 1946 (22 U.S.C. 1091 and 1093).

At time of signing the President issued a statement which reads in part as follows:

"H.R. 12598 also permits more than 800 senior Foreign Service officers, whose pay is at \$47,500, to retire voluntarily between October 1, 1978, and December 31, 1979, and compute their annuities on the basis of their highest single year's salary. This is commonly referred to as 'High One' retirement authority. Currently, annuities of all Civil Service and other Foreign Service employees are based on the average of their highest three years' salaries.

This extraordinary retirement bonus -- only for high-ranking Foreign Service officers paid at the statutory ceiling of \$47,500 -- will serve as an inducement to retirement at most only 17 months earlier than they might otherwise elect under the 'high three' computation formula.

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I strongly oppose this provision. Enactment of a 'high one' bonus for the Foreign Service introduces a new one-time retirement benefit despite my call for a moratorium on nonessential government retirement liberalizations. This call came during the deliberations of the new President's Commission on Pension Policy, which was established to review the nation's retirement and disability systems, including federal employee retirement systems.

Nevertheless, I am signing H.R. 12598, despite the 'high one' retirement provision, because the bill authorizes urgently needed appropriations for State, ICA, and BIB while also creating new tools to help these agencies carry out their foreign affairs programs. In this regard, I note that the conference report on H.R. 12598 explains that the Senate, which did not include 'high one' in its version of the bill, acceded to the House:

'.... because of the serious personnel surplus in senior Foreign Service ranks. It is not to be construed as a precedent for broadening other Government retirement inducement authorities now or in the future. Both the House International Relations Committee and the House Post Office and Civil Service Committee chairmen have agreed that enacting this provision will not constitute a precedent for other U.S. Government personnel systems.'

In approving H.R. 12598, I am taking in good faith the conferees' assurances that the bill's 'high one' retirement authority will not serve as a precedent for other government retirement programs."

Thus employees who retire after October 1 (the effective date of the Authorization Act) are presently entitled to have their annuities computed on the basis of Section 406.

Legislative proposals are pending before the Congress which may or may not be enacted prior to adjournment, however, which would (1) repeal section 406, and/or (2) state that none of the "funds available to the Foreign Service Retirement and Disability Fund shall be available to carry out the provisions of Section 406." If the first proposal is passed, the

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entitlement would, of course, end at the time the bill to which it was attached was signed into law. If the second proposal were enacted, it would create a legal situation in which retirement fund managers would be prohibited from making funds available for retirement under Section 406. Thus retirees would probably have to seek legal remedies to obtain payment of any incremental benefits under Section 406. The timing and nature of court decisions in such cases cannot be predicted.

The Department is disseminating this information so that all concerned may be fully informed of developments. We will, of course, keep posts informed of any and all further related developments between now and adjournment of Congress expected on October 14.

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